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VALIDITY OF LAWS LIMITING HOURS OF LABOR.—Laws dealing with this subject, in so far as they are legislative enactments, may be divided into two classes of limitations, viz: First, restrictions as to the hours of labor of private individuals or corporations, in which the extent of the police power only is concerned; and, second, the regulation of the hours of labor of individuals under contract with or hiring labor under contract with the State, or city, township or other municipal corporation in which the power of the legislature of a State to control municipal corporations in that State is chiefly involved.

The proper exercise of the police power of a State cannot be definitely defined nor can the extent to which it may be used be accurately pointed out.[1] It must never, however, be employed except in circumstances where the health, morals, safety or general welfare of the people are clearly endangered or where the exigency demands some reforming action on the part of the legislature.[2] There is a great deal of variance in the different States in regard to the extent of its use. Some States have extended it more than others and there seems to be a general tendency in all the States toward a freer and more liberal use of this power.[3] It

[1] Richie *v.* People, 155 Ill. 98, 40 N. E. 457, 46 Am. St. Rep. 315, 29 L. R. A. 79.
[2] *Id.*
[3] *Re* Broad, 36 Wash. 449, 78 Pac. 1004, 70 L. R. A. 1011; Cleveland *v.* Construction Co., 67 Ohio St. 197, 213, 219.

is invoked in order to justify what would be in a great many cases plain violations of the State or Federal Constitution.

The chief constitutional objections urged against the laws under discussion are that they violate the Fourteenth Amendment to the Federal Constitution and similar provisions in the State constitutions by depriving persons of liberty and property without due process of law. Restricting a person's right to dispose of his labor —which is his property—as he sees fit is destroying his liberty to contract and is depriving him of property without due process of law.[4] Liberty to contract for one's own labor involves also the right to fix the price and to name the number of hours to be consumed in the labor. Any arbitrary interference with or restriction of this right will abridge this constitutional freedom which is the inalienable right of every citizen.[5] Also, it is argued, such laws deny to some classes the general protection of the law, since they discriminate in favor of or against those engaged in certain designated employments and those engaged in other occupations.[6] The usual objection urged in most cases of an extended and liberal use of this kind of legislation is that such regulations are not proper applications of the police power.

In favor of these laws, on the other hand, it has been pointed out that they do not deprive the individual of liberty or property but are merely proper limitations of these rights in accordance with the power of the State to protect the health, morals, safety or general welfare of its citizens.[7] Also in reply to the statement that these laws discriminate in favor of or against certain classes it may be said that the legislature has the power to enact class legislation where the statute applies to persons generally of a certain group which has been properly and reasonably classified for this legislation.[8]

Statutes regulating the hours of employment of women in certain establishments have as a rule been upheld if the classification of establishments has been reasonable and not arbitrarily discriminatory.[9]

Justification for such regulation rests finally in the police power of the State.[10] In the case of *Muller* v. *Oregon*,[11] a law limiting the hours of labor for women in certain establishments to 10 hours per

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[4] *Ex parte* Kubach, 85 Cal. 274; *Ex parte* Wong Wing (Cal.), 138 Pac. 695, 51 L. R. A. (N. S.) 361; People *v.* Williams, 189 N. Y. 131, 81 N. E. 778, 12 L. R. A. (N. S.) 1130.

[5] Low *v.* Rees Printing Co., 41 Neb. 127, 59 N. W. 362, 43 Am. St. Rep. 670, 24 L. R. A. 702.

[6] People *v.* Lochner, 177 N. Y. 145, 69 N. E. 373; State *v.* Miksicek, 225 Mo. 561, 125 S. W. 507; *In re* Eight Hour Bill, 21 Col. 29; People *v.* Williams, 189 N. Y. 131, 81 N. E. 778, 12 L. R. A. (N. S.) 1130.

[7] Holden *v.* Hardy, 169 U. S. 366; Wenham *v.* State, 65 Neb. 394, 91 N. W. 421, 58 L. R. A. 825.

[8] Holden *v.* Hardy, *supra;* Jacobson *v.* Mass., 197 U. S. 11.

[9] State *v.* Buchanan, 29 Wash. 602, 70 Pac. 52, 92 Am. St. Rep. 930.

[10] Withey *v.* Bloem, 163 Mich. 419, 128 N. W. 913.

[11] 208 U. S. 412.

day is upheld as a proper police regulation. To quote the court: "The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. The difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her." [12]

Statutes limiting hours of labor of minors are constitutional since minors are not *sui juris;* the State stands in the position of *parens patriæ* towards them and may exercise unlimited power over their right to contract and their manner of exercising the right.[13]

Legislative restrictions of hours of labor of persons engaged in mining, smelting or other underground work have in most cases been upheld.[14] Those in regard to ordinary laborers, mechanics and other workers have been generally declared to be improper police regulations for the obvious reason that such limitations do not have a real or substantial relation to the protection of health, safety, morals, or the general welfare of the community.[15] For the same reason a statute which provides that no employee shall be required or permitted to work in a biscuit, bread, or cake bakery, or confectionery establishment more than 60 hours in one week or 10 hours per day is also held to be unconstitutional.[16]

A statute which limits hours of labor of men employed by public service corporations such as railroads where the employee's work is concerned with the public safety or health are constitutional. The hours of labor of train dispatchers may be limited by the legislature.[17]

The question of the legislative competence to regulate the hours of labor of persons engaged in public work undertaken by a city, town, or other municipal corporation brings up its capacity to control municipal corporations. The legislature has the absolute right and power to adjust the municipal corporation in any function which is delegated and governmental and in which it is acting as

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[12] See People *v.* Lochner, *supra;* Muller *v.* Oregon, *supra,* in no way disapproving of this case but distinguishing it by pointing out the necessity for a police regulation in regard to women on account of the difference in structure, etc., between man and woman.

[13] State *v.* Shorey, 48 Ore. 396, 86 Pac. 881.

[14] Holden *v.* Hardy, *supra; Ex parte* Martin (Cal.), 106 Pac. 235, 26 L. R. A. (N. S.) 242; State *v.* Livingston Concrete Building and Mfg. Co., 34 Mont. 579, 87 Pac. 980.

[15] See *In re* Eight Hour Bill, 21 Col. 29, 39 Pac. 328.

[16] People *v.* Lochner, 177 N. Y. 145, 69 N. E. 373; State *v.* Miksicek, 225 Mo. 561, 125 S. W. 507.

[17] People *v.* Erie R. Co., 198 N. Y. 369, 91 N. E. 849; *In re* Ten Hour Law for Street Ry. Corp., 24 R. I. 603, 54 Atl. 602, 61 L. R. A. 612; Cleveland *v.* Clements Bros. Constn. Co., 67 Ohio St. 197, 65 N. E. 885, 93 Am. St. Rep. 670, 59 L. R. A. 775.

the agent of the State.[18] Thus, a city in paving its streets is carrying out a delegated governmental function by authority of the State and is acting as its agent. The legislature of the State in this case is capable of limiting the hours that laborers shall work in this employment.[19] But where the municipal corporation is undertaking work of purely local concern and which is not delegated or governmental the legislature has no right to interfere and prescribe the number of hours that laborers shall be employed in carrying out this work.[20]

A municipal corporation is seen then to possess a dual character: the one governmental, legislative or public; the other, proprietary, or private. In its public character, a municipal corporation acts as an arm or mere subdivision of the State with no discretion but to carry out the legislative will; while in its private capacity the legislature has no more power over it than over any other private corporation.[21] The right to contract and the constitutional guarantees of liberty and property belong to it as to a private corporation and the legislature can deprive it of neither without due process of law. In performing activities which are public, the power of setting out the manner and means in which this may be done rests exclusively in the legislature and persons contracting for this work must take notice of the restrictions named in the statute.[22] It can not be said that laws regulating the hours of labor in this case, discriminate between persons employed in public work and those engaged in private work, for no one has a constitutional right to engage in public work and there can be no discrimination where a right is not concerned.[23] It is not a police regulation but simply a proper limitation of the legislature. Thus, a man contracting with a city to lay a sewer must comply with a statute which declares that no laborer, mechanic or other workman shall be required or permitted to be employed in public work for more than eight hours per day and any violation on his part in hiring labor will subject him to the penalty set out in this statute.[24]

On the other hand such attempted regulations of municipal corporations in work which is not public but which is concerned only with the local community, must be justified as a proper police regulation since the power of the legislature in this case is on the same plane as its regulation of individuals and private corporations. Thus, an individual under contract with a city to serve on the fire

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[18] Keefe *v.* People (Col.), 87 Pac. 891, 8 L. R. A. (N. S.) 131; People *v.* Metz, 190 N. Y. 148, 85 N. E. 1070, 24 L. R. A. (N. S.) 201; Atkin *v.* Kansas, 191 U. S. 207.

[19] Atkin *v.* Kansas, *supra.*

[20] Commonwealth *v.* Casey, 231 Pa. 170, 80 Atl. 78, 34 L. R. A. (N. S.) 767; People *v.* Sturgis, 78 App. Div. 460, 79 N. Y. Supp. 969.

[21] 1 DILLON, MUNIC. CORP., § 66 (39). Com. *v.* Casey, *supra.*

[22] *In re* Dalton, 61 Kan. 257, 59 Pac. 336, 47 L. R. A. 380.

[23] *In re* Dalton, *supra;* People *v.* Orange Co. Road Constn. Co., 175 N. Y. 84, 65 L. R. A. 38.

[24] *In re* Broad, 36 Wash. 449, 28 Pac. 1004, 70 L. R. A. 1011; Atkin *v.* Kansas, *supra.*

department is engaged in work which is purely local, and the city in conducting a fire department is not acting under authority deputed to it by the legislature but is carrying out work which strictly concerns the municipality itself.[25]

Ordinances of towns and cities may not control the hours of labor of persons engaged in public work except where they may be upheld as a valid exercise of the police power.[26]

The Hours of Service Act of the Interstate Commerce Commission supercedes State regulations in cases where this act is applicable.[27]

CENSORSHIP OF MOVING PICTURE FILMS AS AN INTERFERENCE WITH THE FREEDOM OF THE PRESS.—A question of novel impression was raised in the recent case of *Mutual Film Co.* v. *Industrial Commission of Ohio,* 215 Fed. 138, by the contention of counsel for the defendant corporations that a State statute providing for censorship of moving picture films is unconstitutional as abridging the freedom of the press. The statute established a board of censors to which all films were required to be submitted before being publicly exhibited in the State, and prohibited the exhibition of any film not bearing the stamp of approval of the board. Only such films as were in the judgment and discretion of the board of censors of a moral, educational, or amusing and harmless character could be passed and approved by the board. A fee for the inspection and penalties for violation of the act were provided, with the right to file a petition for hearing on the reasonableness and lawfulness of the order of the board of censors.

The guaranty of freedom of speech and of the press under the First Amendment to the Federal Constitution prevents Congress only, and not the State legislatures, from passing statutes abridging the freedom of the press, because the first eight amendments to the Constitution have reference to the powers to be exercised by the national government and not to those of the States.[1] Nor did the privileges and immunities clause of the Fourteenth Amendment aid the defendants because corporations are not "citizens" within the true meaning of the clause.[2] The Constitution of Ohio, however, contains a section guaranteeing freedom of the press.[3] Without passing upon the question whether or not the corporations

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[25] People *v.* Sturgis, *supra.*

[26] Fiske *v.* People, 188 Ill. 206, 58 N. E. 985, 52 L. R. A. 291; *Ex parte* Kubach, 85 Cal. 274, 24 Pac. 737, 9 L. R. A. 482; *In re* Broad, *supra.*

[27] Erie R. Co. *v.* People of N. Y., 34 Sup. Ct. 756.

[1] Eilenbecker *v.* Plymouth County, 134 U. S. 31, 34.

[2] Blake *v.* McClurg, 172 U. S. 239; Orient Ins. Co. *v.* Daggs, 172 U. S. 557.

[3] "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press." A. 1, § 11.